

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 26, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

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**Appeal No. 2010AP1555**

**Cir. Ct. No. 2006FA7189**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE MARRIAGE OF:**

**NICOLE SCHROEDER N/K/A NICOLE CHAFFEE,**

**PETITIONER-RESPONDENT,**

**v.**

**RONALD SCHROEDER,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Ronald Schroeder, *pro se*, appeals from a March 23, 2010 trial court order that addressed post-judgment matters.<sup>1</sup> On appeal, Schroeder raises numerous issues concerning the validity of the default divorce judgment, the property division, and child support. For reasons explained below, we affirm the trial court's order.

### BACKGROUND

¶2 This is the second time this court has considered an issue related to the trial court's March 23, 2010 order. After Schroeder filed a notice of appeal in 2010, he asked the trial court to waive fees related to transcripts that he wanted produced for his appeal. The trial court denied his request, Schroeder appealed, and we affirmed. *See Schroeder v. Schroeder*, No. 2010AP2765, unpublished slip op. (WI App Jan. 31, 2012).

¶3 This appeal concerns post-judgment motions filed by Schroeder. Schroeder and Nicole Schroeder, now known as Nicole Chaffee, were divorced on October 15, 2007.<sup>2</sup> They are the parents of two minor children. At the time of the final divorce hearing, Schroeder was incarcerated and did not appear in person, by phone, or by counsel.<sup>3</sup> A week after the final divorce hearing, Schroeder filed a

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<sup>1</sup> This appeal was on hold pending the outcome of a separate appeal. *See Schroeder v. Schroeder*, No. 2010AP2765, unpublished slip op. (WI App Jan. 31, 2012). After the hold was lifted, Schroeder was granted numerous extensions of time to file his opening brief and his reply brief. Briefing concluded in February 2014.

<sup>2</sup> Nicole's name is spelled Nichole throughout the record, but to be consistent with the caption of this appeal, we spell it Nicole. We will refer to Nicole Chaffee as "Chaffee" in this opinion.

<sup>3</sup> In April 2008, Schroeder was sentenced to six years of initial confinement and twelve years of extended supervision on thirty-one various charges, including two counts of second-degree sexual assault of an unconscious victim, in Waukesha County.

letter with the trial court complaining about the fact that the hearing was held in his absence, but he did not file any motions or a notice of appeal after the judgment was signed on October 31, 2007.

¶4 In July 2008, the State moved to amend the child support order based on Schroeder's incarceration, but the request was denied by a court commissioner. Schroeder, acting *pro se*, personally sought review by the trial court.<sup>4</sup> He also filed a short letter with the trial court indicating that he wanted to file a motion to vacate the divorce judgment and seeking assistance from the court concerning forms and instructions.

¶5 On October 6, 2008, Schroeder filed a motion to vacate what he termed the "default divorce judgment," alleging that he was entitled to relief from the judgment pursuant to WIS. STAT. § 806.07(1). The motion sought relief from the custody, placement, and property division provisions of the judgment. With respect to the property division, Schroeder said that when Chaffee conducted a rummage sale prior to the divorce—which was specifically noted in the divorce judgment—she netted only \$3000. Schroeder alleged that the value of his half of their personal property (including "antiques, furniture, appliances, jewelry, tools, motor vehicles, rare collectibles, etc.") was \$86,550 and that the property should have been sold for more money.

¶6 On October 8, 2008, the trial court heard Schroeder's motion for *de novo* review of the court commissioner's denial of the motion to modify child support. The trial court dismissed Schroeder's motion on grounds that it was filed

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<sup>4</sup> Schroeder has never had counsel representing him in this divorce case.

seven days late. On January 15, 2009, Schroeder filed a new motion to modify child support as well as numerous other motions.<sup>5</sup>

¶7 At a hearing on January 21, 2009, the trial court did not decide Schroeder’s motion to modify child support, but it ordered that any modification would be retroactive to January 15, 2009. The trial court also denied Schroeder’s request to reopen the divorce judgment as to custody and placement, and indicated that it had not yet ruled on Schroeder’s motion to reopen the property division.

¶8 On March 27, 2009, the trial court held a hearing on the motion to reopen the property division.<sup>6</sup> The trial court found that at the time Chaffee held the rummage sale, she violated a temporary order that prohibited selling or transferring property during the pendency of the divorce, and that this “constitute[d] misconduct as that term is used in [WIS. STAT. §] 806.07(1)(c).”

The trial court added:

[I]t appears that there may well have been an unfair distribution of assets and debts here [in] that ... there were sales of assets belonging to Mr. Schroeder which may well have been for far less than their fair market value. Fair market value of a motorcycle is not determined by a rummage sale price.... At least one of these transactions was a transaction between [Chaffee] and her father. She sold her father a Harley-Davidson motorcycle for \$500....

....

... I have [a] serious question of whether a 2001 Harley is worth \$500.

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<sup>5</sup> The post-judgment record in this case is voluminous. This court will not attempt to summarize every letter and motion filed in this case.

<sup>6</sup> The trial court also addressed issues related to contact with Schroeder’s children. Those issues are not before the court at this time and will not be discussed.

The trial court also noted concerns about the sale of a car and a motorbike.

¶9 Despite its concerns about the rummage sale, the trial court dismissed Schroeder's motion for "replevin" of the motorcycle. The trial court said that because the motorcycle was no longer in Chaffee's possession, Schroeder's request was "too late."

¶10 In the July 1, 2009 written order memorializing the hearing, the trial court indicated that it was reopening "the division of property and debt" pursuant to WIS. STAT. § 806.07(1)(c), (g), and (h). The trial court ordered Chaffee to provide Schroeder with "a list of items ... sold at the rummage sale, along with the amounts received." Both parties were also instructed to exchange financial disclosure statements "reflecting ... the assets and debts of the parties as existing immediately before the October 15, 2007 divorce hearing."<sup>7</sup>

¶11 Prior to the next hearing, Schroeder took several actions concerning the motorcycle. First, he contacted the bankruptcy trustee who handled Chaffee's bankruptcy and asserted that the title to his motorcycle had been forged. This led to the reopening of Chaffee's bankruptcy. According to an August 12, 2009, order from the bankruptcy court, the trustee agreed "to compromise any claim for fraudulent conveyance against [Chaffee's father] regarding [his] purchase of a 2001 Harley Davidson [motorcycle from Chaffee]." The trustee accepted payment of \$6818 for the motorcycle.

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<sup>7</sup> At the hearing, Chaffee's counsel noted that Chaffee had been granted a bankruptcy and questioned how that might affect debt allocation; that issue was not resolved.

¶12 Next, on September 2, 2009, Schroeder filed a motion with the trial court seeking to “rescind” the sale of the motorcycle, again alleging that the title of the motorcycle had been forged.

¶13 At the hearing on September 18, 2009, the trial court indicated that it could not proceed with the child support matter until it had in its possession Schroeder’s documents concerning certain costs and fees.<sup>8</sup> Then, according to notes from the hearing, “Schroeder offer[ed] a proposal which would negate the need for a hearing” and the parties took a break to discuss it. When court reconvened, Chaffee’s attorney mentioned a “3-tiered proposal” that the trial court directed be reduced to writing. The hearing was adjourned until October 23, 2009.

¶14 On October 23, 2009, the parties met with the trial court off the record. Online court records indicate that Chaffee’s attorney provided a written proposal to Schroeder and the matter was adjourned to December 2, 2009.

¶15 On December 2, 2009, a hearing was held on the record.<sup>9</sup> Notes from the hearing indicate: “Parties making progress in negotiating an agreement however Mr. Schroeder asking [that] the court schedule a hearing on his motion for [Chaffee] to rescind the sale of the motorcycle.” A hearing was set for February 22, 2010.

¶16 At the hearing on February 22, 2010, the trial court made several rulings that were later memorialized in the trial court’s March 23, 2010 order that

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<sup>8</sup> The record does not contain a transcript of this hearing. The limited information available to this court comes from online court entries.

<sup>9</sup> No transcript for this hearing has been provided.

is at issue in this appeal.<sup>10</sup> The excerpt of the transcript that has been provided begins with the trial court stating: “I think we have an accord here, a meeting of the minds ... [and] I’ll try to restate it for the record, just to make sure that I understand it.” The parties then restated their agreement concerning Schroeder’s contact with his children. Next, they had the following exchange concerning the property disputes:

[Chaffee’s attorney]: ... I guess the question I have for Mr. Schroeder, then, is everything else agreed upon, with the exception of the Harley Davidson? ....

THE COURT: Okay. Do we have agreement, then, on everything except the Harley, which we’re here for today?

MR. SCHROEDER: That’s a fair question. *We’re in agreement with everything except the Harley, and I think there was eight items [of personal property] that I’ve indicated.* And [Chaffee] was going to look for those and let us know today if she was able to find them.

(Emphasis added.) The parties then discussed the eight specific items of personal property, such as a ring and a blanket chest, and made arrangements for some of that property to be returned to Schroeder.

¶17 After discussing the eight items of personal property, the trial court turned to a discussion of the Harley-Davidson motorcycle. The trial court took testimony from Schroeder and Chaffee. Schroeder testified that he never signed the title to his motorcycle and asserted that his “signature was forged.” In

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<sup>10</sup> Only an excerpt of the transcript has been provided. According to one of Schroeder’s filings, approximately one hour of the on-the-record discussion that occurred before the excerpt begins is not included in the transcript. “It is the appellant’s responsibility to ensure completion of the appellate record and ‘when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court’s ruling.’” *State v. Provo*, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (citation and one set of quotation marks omitted).

contrast, Chaffee testified that when she found the title to the motorcycle in a filing cabinet in the house, it was already signed by Schroeder. Chaffee said that when she had the rummage sale, she could not get the motorcycle “to start very well” and when prospective buyers heard that, they did not offer to buy it. She said that as she was closing up her house after the rummage sale—her plan being that she “was leaving for good and never coming back”—her father offered her \$500 for the motorcycle and she accepted, rather than leave the motorcycle at the house.<sup>11</sup> She said that her father subsequently paid about \$2000 to repair the motorcycle and later paid the bankruptcy court an additional \$6818.

¶18 After the testimony, the parties presented arguments to the trial court. Schroeder said:

[I]f the Court legally ... rescinds the sale of the motorcycle, I have already stated on the record that I will ... forgo future litigation of approximately 86,000 dollars of marital property, as well as approximately 60,000 dollars of marital debt as of the day of the divorce.

I think, quite frankly, that it's a win-win situation. Because if we can conclude this today, then the sale is legally rescinded ... [and] it's going to prevent, I think, a lot and lot and lot of ... future litigation.

¶19 The trial court found that the motorcycle had been purchased in 2003 for \$10,000. It further accepted Chaffee's testimony that the title was already signed by Schroeder when she found it in a file cabinet. The trial court continued:

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<sup>11</sup> In an earlier filing, Chaffee explained that “[t]he rummage sale was done in part with the expectation that if a foreclosure was completed the items in question could be forcibly removed from the property[,] potentially resulting in their destruction without recouping any value.”

I have found that ... the sale of this motorcycle for the sum of 500 dollars was enough to raise an eyebrow. And it was on that basis that the Court reopened the property division in the divorce judgment with regard to this transfer, because I was concerned that a \$500 sale ... by Miss Chaffee to her father ... didn't appear to be a fair market value transfer.

I believe that that problem of the sale for less than fair market value has been largely remedied by what has happened here in bankruptcy court. [Chaffee's father] was required to pay ... 6,818 dollars, which means as far as the purchase of this bike is concerned, he's paid a total of [\$7318] ... towards the purchase price.

And there's also testimony... that he made some 2,000 dollars in repairs to the bike ... [which] may have been due to the fact that the bike had been standing for some period of time before it was used or attempted to be used.

....

So that brings [Chaffee's father's] investment in this bike to 9,318 dollars.

¶20 The trial court said that it would award Schroeder one-half of the \$6818 that was paid to the bankruptcy court, and that it would apply that \$3409 to Schroeder's child support arrearage. The trial court also said:

[N]ow that the full picture has been put in front of the Court, and it's also been explained to the Court's satisfaction that no forgery took place, I don't find the judicial conscience to be shocked the way I initially felt when I thought that all would come out was a \$500 sale.

¶21 Schroeder urged the court to rescind the sale of the motorcycle, rather than give him \$3409. Schroeder said that if the motorcycle and title were returned to him, he "would forgo that entire 60,481 dollars in documented marital credit card debt and the 86,550 dollars in assets that were disposed of." Schroeder added: "And if the Court is going to rule that as a matter of law that the title is

legally owned by [Chaffee's father], then unfortunately ... we'll need to address” issues related to the credit card debt and other assets.

¶22 In response, the trial court said:

[Y]our testimony was not [altogether] clear on the point of whether or not you had signed the title to the motorcycle.... [A] lot of your claim was centered around the fact of a forgery ... but ... your memory on some of these things was incorrect.

To wit, your memory on the purchase price.... [A]t first you said 16,000 dollars [and] that you purchased it in '05. And then you said 15,000. And then later you changed the year of purchase from '05 to '03. And then it came out ... [that] the purchase price was 10,000 dollars.

So that just as your memory was faulty on those facts, I'm finding also that your memory as to whether or not you signed the title could likewise be faulty. And that's the basis for my ruling.

I'm not going to engage in a discussion with you here. If you want to pursue those other things, you're free to do so. But I'm not going to bargain with you. And I'm not going to take what you said as some sort of implicit threat: Judge, if you don't give me this, I'm going to pursue that.

....

I am now going to ... close the judgment with regard to the property division. The only item that I was interested in here was the motorcycle. I'm going to close the judgment with regard to that item for the reasons that I've indicated. And I will give you a credit on the child support arrearage.

¶23 Later, when Schroeder again asked whether the trial court would hear the matters concerning the credit card debt and “other items of the property,” the trial court said: “I don't believe we've reopened all of the property and debt divisions here. It was the division as to [the motorcycle] that was reopened.”

¶24 The trial court also commented on the existing child support order. Apparently not recalling that Schroeder had filed a motion to modify the child support order over a year earlier, the trial court told Schroeder that he “might want to seek some sort of a modification of [his] child support obligation” in light of his incarceration. Schroeder responded: “I did have a motion to modify support. That was one of the matters that was addressed. On an additional matter, if I may, before I forget, the telephone visits [with the children], we didn’t agree to a start date.” The parties then discussed the start date for telephone visits. No party or the trial court ever mentioned Schroeder’s child support motion again. The trial court subsequently signed a short written order that referenced the transcript of its oral ruling as the basis for its decision granting Schroeder credit against his child support arrearage and closing the issue of the property and debt division.

¶25 About a month after the hearing, Schroeder filed a document entitled “notice of intent to file complaint with the judicial commission.” (Capitalization omitted.) Based on this submission, the trial court subsequently recused itself and the case was reassigned to another judge.<sup>12</sup>

¶26 In the weeks after the trial court’s March 23, 2010 order was entered, Schroeder continued to file motions and letters related to various aspects of the divorce. As relevant to this appeal, he filed a motion for reconsideration of the trial court’s March 23, 2010 order, which the newly assigned judge denied. Schroeder also explicitly asked the trial court to decide his October 6, 2008 motion

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<sup>12</sup> The Honorable Francis T. Wasielewski presided over the divorce proceedings and the initial post-judgment motions. The case was subsequently transferred to the Honorable Elsa C. Lamelas.

for modification of child support. On May 11, 2010, the trial court denied the motion in a written order, stating:

Modification of support is denied. [Schroeder] failed to seek de novo relief and the motion was denied. Though it appears the motion was re-filed, [Schroeder] has never shown a change in circumstances. In any event, when that was raised at the last hearing, [Schroeder] acknowledged that “was one of the matters that was addressed.”

The trial court’s order, which also addressed additional issues, explicitly stated that it was a final order for appeal purposes and that “[n]o further hearings are contemplated.” Schroeder did not appeal from the May 11, 2010 order. Instead, his notice of appeal indicated that he was appealing from the March 23, 2010 order and did not reference the May 11, 2010 order.

### DISCUSSION

¶27 Schroeder raises numerous issues on appeal. His primary three arguments are: (1) the trial court “never adjudicated [his] motion to modify child support”; (2) the “entire marital property matter ... was never fully and fairly adjudicated”; and (3) the trial court “erroneously decided the motorcycle matter.” (Some capitalization omitted.) We consider each issue in turn.

#### *I. Motion to modify child support.*

¶28 It is undisputed that the trial court did not address the merits of Schroeder’s child support motion at the February 22, 2010 hearing. Schroeder asks this court “to direct the [trial] court to adjudicate his child support modification motion.” We decline to do so, because the issue is moot. *See State ex rel. Milwaukee Cnty. Pers. Review Bd. v. Clarke*, 2006 WI App 186, ¶28, 296 Wis. 2d 210, 723 N.W.2d 141 (“An issue is moot when its resolution will have no

practical effect on the underlying controversy” and “[w]e determine independently whether an issue is moot.”) (citation omitted). Whether the trial court should have resolved the child support issue at the February 22, 2010 hearing is a moot issue because the judge that began presiding over the case in April 2010 did, in fact, decide the merits of the child support motion, after Schroeder explicitly asked the trial court to do so in a letter he filed on April 26, 2010. The trial court’s written order, quoted above, denied the child support motion on its merits, and Schroeder did not appeal that order. We reject Schroeder’s first issue on mootness grounds.

## *II. Concerns about the property and debt division.*

¶29 Schroeder raises six issues related to the property and debt division and also asserts that this court should reverse in the interest of justice. We reject the first five issues without discussion because they are not properly before this court. Specifically, Schroeder argues that at the final divorce hearing in 2007, the trial court failed to: (1) give Schroeder an opportunity to be heard; (2) order the parties to update their financial disclosure statements; (3) “determine a fair market value of the marital property”; (4) take action when Chaffee disposed of marital property at “an unlawful and unauthorized” rummage sale; and (5) “provide reasoning for deviating from the presumption of equal division of property and debts.” (Bolding omitted.) Schroeder chose not to pursue an appeal or other motions at the time the final divorce judgment was entered. He cannot simply raise those issues seven years later in the context of an appeal of a specific order.

¶30 The next issue Schroeder raises is properly before this court. Schroeder argues: “While the [trial] court properly re-opened the entire marital valuation and division portion of the default final divorce, it subsequently

erroneously said [at the February 22, 2010 hearing] it re-opened only one property item, adjudicated it, then closed the entire marital property matter.” (Bolding omitted.) Schroeder argues that this court should reverse the order and vacate the divorce judgment.

¶31 Once a judgment has been reopened, a trial court exercises its discretion when it decides whether to modify the original judgment. *See Franke v. Franke*, 2004 WI 8, ¶67, 268 Wis. 2d 360, 674 N.W.2d 832. Schroeder faults the trial court for stating at the hearing on March 27, 2009, and in the July 1, 2009 written order that it would reopen the property and debt division, and then stating at the February 22, 2010 hearing that it would only modify the judgment with respect to the motorcycle. Even if we accept Schroeder’s assertion that the trial court reopened the entire property and debt division in 2009, we conclude that Schroeder is judicially estopped from pursuing the relief he seeks.

¶32 The equitable doctrine of judicial estoppel “precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position.” *State v. Petty*, 201 Wis. 2d 337, 347, 548 N.W.2d 817 (1996). The doctrine “is intended to protect against a litigant playing fast and loose with the courts by asserting inconsistent positions.” *Id.* (citations and two sets of quotation marks omitted). Judicial estoppel may be invoked where: (1) a litigant takes a position clearly inconsistent with an earlier position; (2) the facts at issue are the same in both cases; and (3) the party to be estopped convinced the first court to adopt its position. *Id.* at 348.

¶33 We begin with Chaffee’s response to Schroeder’s appellate brief. Chaffee notes that at the February 22, 2010 hearing, the parties made an on-the-record stipulation. As noted above, Schroeder told the trial court: “We’re in

agreement with everything except the Harley” motorcycle and eight items of personal property. The trial court and the parties subsequently discussed each of those eight items of personal property individually, and then the trial court turned to the issue of the motorcycle. Chaffee explains:

In other words, the parties had *agreed* on all issues other than the motorcycle and the eight items of personal property. What Schroeder attempted to do before the trial court, and what he continues to attempt to do on this appeal, is argue that because the judge did not decide the motorcycle issue in his favor, he wants to raise additional issues involving the property division, even though he waived his right to do so by stipulating that the only issues to be presented to the court involved the motorcycle and the personal property.

¶34 On appeal, Schroeder urges this court to reverse the trial court’s order closing the property and debt division, despite his earlier stipulation. We conclude that Schroeder is judicially estopped from attempting to revisit the property and debt division because he stipulated on the record that only certain property issues remained to be addressed and the trial court, accepting that stipulation, conducted the remainder of the hearing consistent with that stipulation. *See id.*

¶35 Schroeder next argues that this court should exercise its discretionary authority and reverse the order in the interest of justice because “the real controversy has not been fully tried.” *See* WIS. STAT. § 752.35. He argues that the trial court “never adjudicated [the] child support motion and never determined the fair market value of the marital estate and meaningfully and insightfully divided it.” We decline to exercise our discretionary authority to reverse the trial court’s order in the interest of justice. Schroeder chose not to appeal the original divorce judgment and has had numerous opportunities to raise

additional issues in post-judgment proceedings. A discretionary reversal is not warranted.

*III. Challenge to the trial court's decision concerning the motorcycle.*

¶36 Schroeder presents numerous arguments concerning the trial court's resolution of the issues concerning the motorcycle. He argues that the trial court erred by not approving either the motion for replevin or the motion to rescind the sale, which he claims was required because: the original sale of the motorcycle to Chaffee's father violated a temporary order; the title was allegedly forged; and the sale did not comply with state administrative procedures. Schroeder also challenges the trial court's factual finding that he signed the title and asserts that the trial court "never determined the fair market value of the motorcycle." (Bolding omitted.)

¶37 We begin with Schroeder's challenges to the trial court's factual findings. We defer to the credibility assessments of a trial court "because of its superior opportunity to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony." *State v. Carnemolla*, 229 Wis. 2d 648, 661, 600 N.W.2d 236 (Ct. App. 1999). Further, we must uphold findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). Here, the trial court assessed the credibility of both Chaffee and Schroeder and accepted Chaffee's testimony. The trial court specifically noted that Schroeder's faulty memory concerning the year he bought the motorcycle and the price he paid weighed against the credibility of his testimony that he did not sign the title. The trial court's finding that the title was already executed by Schroeder when Chaffee found it in a file cabinet is not clearly erroneous.

¶38 Schroeder also argues that the trial court failed to determine the motorcycle's value. We disagree. As detailed above, the trial court considered the \$10,000 that Schroeder originally paid for the motorcycle four years before it was sold, the \$500 originally paid by Chaffee's father, the \$6818 in additional funds later paid to the bankruptcy court, and the \$2000 in repairs made by Chaffee's father. It found that the money Chaffee's father eventually paid was not "shocking."

¶39 Next, we consider Schroeder's complaint that the trial court failed to rescind the sale or grant replevin. We are not convinced that the trial court erroneously exercised its discretion. At the time of the hearing, over four years had passed since the motorcycle was sold. The new owner had paid for repairs and had also just paid the bankruptcy court \$6818 for the motorcycle. The trial court's decision to give Schroeder a credit for his half of the additional payment for the motorcycle was reasonable. We discern no erroneous exercise of discretion in the trial court's selection of a remedy for the original less-than-fair-market sale of the motorcycle. Further, Schroeder has not convinced this court that the trial court was required to grant replevin or rescind the sale.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

